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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,330	03/19/2004	Gregory S. Thoen	32643/101	7019
7590 Nixon Peabody LLP Clinton Square P.O. Box 31051 Rochester, NY 14603-1051			EXAMINER SHU, HO T	
			ART UNIT 2457	PAPER NUMBER
			MAIL DATE 12/11/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/804,330

**Applicant(s)**

THOEN, GREGORY S.

**Examiner**

HO SHIU

**Art Unit**

2457

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 September 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-36 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/CIS)  
4) ☐ Interview Summary (PTO-413)  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_  
Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

1. Claims 1-36 are pending in this application. Claims 1, 3, 13-15, 25, and 27 were amended by applicant's amendment filed on 09/03/2008.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 3, 13, 15, 25, and 27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.
4. With respect to claims 1, 13, and 25, after reading applicant's specification, nowhere in the specification states that interrogating the client system is used to obtain the content presentation system. The examiner notes that in [0033] and [0036] of applicant's PG Pub, the applicant mentions in [0033] obtaining the operating environment information which does not mention interrogating the client system. In [0036] of applicant's PG Pub, interrogating the computer 14 has been mentioned. However, this interrogation is merely to

Art Unit: 2457

determine whether the image file has been rendered as stated by the applicant.

5. With respect to claims 3, 15, and 27, after reading applicant's specification, nowhere in the specification states determining two or more of a current content transfer rate for the client system.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1-2, 8, 10-14, 20, 22-26, 32, 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egli et al. (Pub # US 2003/0110234 A1, hereinafter Egli) in view of Yan et al. (US Patent # 6,003,065, hereinafter Yan).**

8. With respect to claim 1, Egli discloses a system for providing content to a client system, the system comprising ([0058], lines 4-7): an assessment system that obtains content presentation environment information associated with the client system ([0066], lines 1-4, [0068], lines 17-20), wherein the content presentation environment information is based on an operating environment

Art Unit: 2457

evaluation of the client system performed by an evaluation system ([0058], lines 7-12); and a content processing system that selects one of a plurality of versions of the content to send the client system using the obtained content presentation environment information ([0060], lines 1-6) but does not clearly disclose interrogating the client system to obtain the content presentation system.

In the same field of endeavor, Yan discloses interrogating the client system to obtain the content presentation system (col. 14, lines 50-67, col. 15, lines 1-10).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli with the teachings of Yan in order to determine what the capabilities of the device are directly (col. 14, lines 50-67, col. 15, lines 1-10).

9. With respect to claim 2, Egli discloses wherein the obtained content presentation environment information comprises a first identifier for a content presentation application associated with the client system ([0069], lines 1-11) and a second identifier for a content transfer rate associated with the client system ([0102], lines 1-7, [0103], lines 5-8, client capabilities are defined inside the content-type tag by one or more capability tags).

10. With respect to claim 8, Egli discloses wherein the assessment system determines whether stored content presentation environment information is available for retrieval from the client system ([0059], lines 14-21, it is comparing

Art Unit: 2457

to known device characteristic and capabilities), wherein the evaluation system evaluates the operating environment of the client system to obtain the content presentation environment information if the stored content presentation environment information is determined to be unavailable ([0066], lines 1-10, [0069], lines 11-15, client capabilities module (CCM) log 323 includes a record of any client devices that could not be identified or for which capabilities are not available).

11. With respect to claim 10, Egli discloses a content delivery system that sends the selected content to the client system in response to a request from the client system, wherein neither the assessment system, the evaluation system, the content processing system, nor the content delivery system request any additional information from the client system ([0068], lines 10-20, it requires information from the data store and not the client system itself).

12. With respect to claim 11, Egli discloses the content delivery system sends the selected content at a content transfer rate that the selected content is formatted to be sent at ([0102], lines 1-7, [0107], lines 1-4, lines 15-18).

13. With respect to claim 12, Egli discloses the content comprises at least one of video content, audio content, hypertext content and document content ([0065], lines 1-6).

Art Unit: 2457

14. With respect to claim 13, Egli discloses a method for providing content to a client system ([0058], lines 4-7); the method comprising: obtaining content presentation environment information associated with the client system ([0066], lines 1-4, [0068], lines 17-20), wherein the content presentation environment information is based on an operating environment evaluation of the client system ([0058], lines 7-12); and selecting one of a plurality of versions of the content to send the client system using the obtained content presentation environment information ([0060], lines 1-6) but does not clearly disclose interrogating the client system to obtain the content presentation system.

In the same field of endeavor, Yan discloses interrogating the client system to obtain the content presentation system (col. 14, lines 50-67, col. 15, lines 1-10).

15. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli with the teachings of Yan in order to determine what the capabilities of the device are directly (col. 14, lines 50-67, col. 15, lines 1-10).

16. With respect to claim 14, Egli discloses wherein the obtained content presentation environment information comprises a first identifier for a content presentation application associated with the client system ([0069], lines 1-11) and a second identifier for a content transfer rate associated with the client system ([0102], lines 1-7, [0103], lines 5-8, client capabilities are defined inside the

content-type tag by one or more capability tags).

17. With respect to claim 20, Egli discloses the obtaining content presentation environment information associated with the client system comprises determining whether stored content presentation environment information is available for retrieval from the client system ([0059], lines 14-21, it is comparing to known device characteristic and capabilities), and evaluating the operating environment of the client system to obtain the content presentation environment information if the stored content presentation environment information is determined to be unavailable ([0066], lines 1-10, [0069], lines 11-15, client capabilities module (CCM) log 323 includes a record of any client devices that could not be identified or for which capabilities are not available).

18. With respect to claim 22, Egli discloses sending the selected content to the client system in response to a request from the client system without requesting any additional information from the client system ([0068], lines 10-20, it requires information from the data store and not the client system itself).

19. With respect to claim 23, Egli discloses the selected content is sent at a content transfer rate that the selected content is formatted to be sent at ([0102], lines 1-7, [0107], lines 1-4, lines 15-18).



20. With respect to claim 24, Egli discloses the content comprises at least one of video content, audio content, hypertext content and document content ([0065], lines 1-6).

21. With respect to claim 25, Egli discloses a computer-readable medium having stored thereon instructions for providing content to a client system, which when executed by at least one processor, causes the processor to perform ([0058], lines 4-7, a system which is a computer has a place for memory storage and also includes a processor): obtaining content presentation environment information associated with the client system ([0066], lines 1-4, [0068], lines 17-20), wherein the content presentation environment information is based on an operating environment evaluation of the client system ([0058], lines 7-12); and selecting one of a plurality of versions of the content to send the client system using the obtained content presentation environment information ([0060], lines 1-6) but does not clearly disclose interrogating the client system to obtain the content presentation system.

In the same field of endeavor, Yan discloses interrogating the client system to obtain the content presentation system (col. 14, lines 50-67, col. 15, lines 1-10).

22. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli with the teachings of Yan in order to determine what the capabilities of the device are

directly (col. 14, lines 50-67, col. 15, lines 1-10).

23. With respect to claim 26, Egli discloses the obtained content presentation environment information comprises a first identifier for a content presentation application associated with the client system ([0069], lines 1-11) and a second identifier for a content transfer rate associated with the client system ([0102], lines 1-7, [0103], lines 1-11, client capabilities are defined inside the content-type tag by one or more capability tags).

24. With respect to claim 32, Egli discloses the obtaining content presentation environment information associated with the client system comprises determining whether stored content presentation environment information is available for retrieval from the client system ([0059], lines 14-21, it is comparing to known device characteristic and capabilities), and evaluating the operating environment of the client system to obtain the content presentation environment information if the stored content presentation environment information is determined to be unavailable ([0066], lines 1-10, [0069], lines 11-15, client capabilities module (CCM) log 323 includes a record of any client devices that could not be identified or for which capabilities are not available).

25. With respect to claim 34, Egli discloses sending the selected content to the client system in response to a request from the client system without requesting any additional information from the client system ([0068], lines 10-20,

Art Unit: 2457

it requires information from the data store and not the client system itself).

26. With respect to claim 35, Egli discloses the selected content is sent at a content transfer rate that the selected content is formatted to be sent at ([0102], lines 1-7, [0107], lines 1-4, lines 15-18).

27. With respect to claim 36, Egli discloses the content comprises at least one of video content, audio content, hypertext content and document content ([0065], lines 1-6).

**28. Claims 3-6, 15-18, and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egli in view of Yan as applied to claims 1, 13, and 25 in view of Hurwitz (US Patent # 6,256,669 B1, hereinafter Hurwitz) and in further view of Hamalainen et al. (US Patent # 6,072,787, hereinafter Hama).**

29. With respect to claim 3, Egli discloses the evaluation system performs the operating environment evaluation of the client system by determining at least one or more types or versions of one or more Web browsers associated with the client system ([0075], lines 1-8), one or more types or versions of one or more content presentation applications associated with the client system ([0064], lines 1-7, [0093], lines 1-9), and one or more types or versions of one or more operating systems associated with the client system ([0005], lines 14-17, [0059],

Art Unit: 2457

lines 19-21, PDA loaded with Palm is a different operating system than a PDA with Windows CE).

However, Egli and Yan do not disclose one of a current content transfer rate for the client system.

In the same field of endeavor, Hurwitz discloses one of a current content transfer rate for the client system (summary of the invention, column 2, lines 14-23).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli and Yan with the teachings of Hurwitz in order to have the capability to determine the bandwidth available (column 2, lines 7-9).

However, Egli, Yan, and Hurwitz do not clearly disclose determining two or more of a current content transfer rate for the client system.

In the same field of endeavor, Hama discloses two or more of a current content transfer rate for the client system (summary of the invention, column 2, lines 14-23).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli, Yan, and Hurwitz with the teachings of Hama in order to determine the desired grade of service the mobile station is capable of being used and to ensure the continuity of data transfer.

30. With respect to claim 4, it is rejected for the same reasons as claim 3 above. In addition, Hurwitz discloses the evaluation system determines the current content transfer rate for the client system by sending an operation execution request to the client system (summary of the invention, Column 2, lines 14-23) and calculating an amount of time taken by the client system to perform an operation associated with the operation execution request (column 4, lines 41-50), wherein the amount of time is measured from when the operation execution request is sent until the evaluation system is notified that the client system completed performing the operation (summary of the invention, column 2, lines 14-23, column 4, lines 46-50).

31. With respect to claim 5, it is rejected for the same reasons as claim 3 above. In addition, Hurwitz discloses the operation comprises rendering an image transmitted from the evaluation system to the client system (column 4, lines 51-57, lines 63-66).

32. With respect to claim 6, Egli discloses wherein the one or more types of content presentation applications comprise at least one of a video presentation application, an audio presentation application, a hypertext document presentation application, and a document processing application ([0065], lines 1-6).

33. With respect to claim 15, Egli discloses the obtaining content presentation environment information associated with the client system comprises performing

Art Unit: 2457

the operating environment evaluation of the client system by determining at least one or more types or versions of one or more Web browsers associated with the client system ([0075], lines 1-8), one or more types or versions of one or more content presentation applications associated with the client system ([0064], lines 1-7, [0093], lines 1-9), and one or more types or versions of one or more operating systems associated with the client system ([0005], lines 14-17, [0059], lines 19-21, PDA loaded with Palm is a different operating system than a PDA with Windows CE).

However, Egli and Yan do not disclose one of a current content transfer rate for the client system.

In the same field of endeavor, Hurwitz discloses one of a current content transfer rate for the client system (summary of the invention, column 2, lines 14-23).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli with the teachings of Hurwitz in order to have the capability to determine the bandwidth available (column 2, lines 7-9).

However, Egli, Yan, and Hurwitz do not clearly disclose determining two or more of a current content transfer rate for the client system.

In the same field of endeavor, Hama discloses two or more of a current content transfer rate for the client system (summary of the invention, column 2, lines 14-23).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli, Yan, and Hurwitz with the teachings of Hama in order to determine the desired grade of service the mobile station is capable of being used and to ensure the continuity of data transfer.

34. With respect to claim 16, it is rejected for the same reasons as claim 15 above. In addition, Hurwitz discloses determining a current content transfer rate for the client system comprises sending an operation execution request to the client system (summary of the invention, Column 2, lines 14-23) and calculating an amount of time taken by the client system to perform an operation associated with the operation execution request (column 4, lines 41-50), wherein the amount of time is measured from when the operation execution request is sent until a notification that the client system completed performing the operation is received (summary of the invention, column 2, lines 14-23, column 4, lines 46-50).

35. With respect to claim 17, it is rejected for the same reasons as claim 15 above. In addition, Hurwitz discloses the operation associated with the operation execution request that is performed by the client system comprises rendering an image transmitted to the client system (column 4, lines 51-57, lines 63-66).

36. With respect to claim 18, Egli discloses one or more types of content presentation applications comprise at least one of a video presentation

Art Unit: 2457

application, an audio presentation application, a hypertext document presentation application, and a document processing application ([0065], lines 1-6).

37. With respect to claim 27, Egli discloses obtaining content presentation environment information associated with the client system comprises performing the operating environment evaluation of the client system by determining at least one or more types or versions of one or more Web browsers associated with the client system ([0075], lines 1-8), one or more types or versions of one or more content presentation applications associated with the client system ([0064], lines 1-7, [0093], lines 1-9), and one or more types or versions of one or more operating systems associated with the client system ([0005], lines 14-17, [0059], lines 19-21, PDA loaded with Palm is a different operating system than a PDA with Windows CE).

However, Egli and Yan do not disclose one of a current content transfer rate for the client system.

In the same field of endeavor, Hurwitz discloses one of a current content transfer rate for the client system (summary of the invention, column 2, lines 14-23).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli with the teachings of Hurwitz in order to have the capability to determine the bandwidth available (column 2, lines 7-9).



However, Egli, Yan, and Hurwitz do not clearly disclose determining two or more of a current content transfer rate for the client system.

In the same field of endeavor, Hama discloses two or more of a current content transfer rate for the client system (summary of the invention, column 2, lines 14-23).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli, Yan, and Hurwitz with the teachings of Hama in order to determine the desired grade of service the mobile station is capable of being used and to ensure the continuity of data transfer.

38. With respect to claim 28, it is rejected for the same reasons as claim 27 above. In addition, Hurwitz discloses determining a current content transfer rate for the client system comprises sending an operation execution request to the client system (summary of the invention, Column 2, lines 14-23) and calculating an amount of time taken by the client system to perform an operation associated with the operation execution request (column 4, lines 41-50), wherein the amount of time is measured from when the operation execution request is sent until a notification that the client system completed performing the operation is received (summary of the invention, column 2, lines 14-23, column 4, lines 46-50).

39. With respect to claim 29, it is rejected for the same reasons as claim 27 above. In addition, Hurwitz discloses the operation associated with the operation

Art Unit: 2457

execution request that is performed by the client system comprises rendering an image transmitted to the client system (column 4, lines 51-57, lines 63-66).

40. With respect to claim 30, Egli discloses one or more types of content presentation applications comprise at least one of a video presentation application, an audio presentation application, a hypertext document presentation application, and a document processing application ([0065], lines 1-6).

41. **Claims 7, 9, 19, 21, 31, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egli in view of Yan as applied to claims 1, 8, 13, 20, 25, and 32 and in further view of Eames et al. (US PUB # 2005/0015551 A1, hereinafter Eames).**

42. With respect to claims 7, 19, and 31, Egli discloses the content presentation environment information ([0059], lines 14-21).

However, Egli and Yan do not disclose it is stored at a location accessible to the client system.

In the same field of endeavor, Eames discloses it is stored at a location accessible to the client system ([0018], lines 1-9).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli and Yan with the teachings of Eames in order to change/update information that the client

Art Unit: 2457

deems necessary.

43. With respect to claim 9, Egli discloses the obtained content presentation environment information ([0066], lines 1-10, [0069], lines 11-15).

However, Egli and Yan do not disclose storing it at a location accessible to the client system.

In the same field of endeavor, Eames discloses storing it at a location accessible to the client system ([0018], lines 1-9).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli and Yan with the teachings of Eames in order to change/update information that the client deems necessary.

44. With respect to claims 21 and 33, Egli discloses the assessment system and the obtained content presentation environment information ([0066], lines 1-10, [0069], lines 11-15).

However, Egli and Yan do not disclose storing at a location accessible to the client system.

In the same field of endeavor, Eames discloses storing it at a location accessible to the client system ([0018], lines 1-9).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Egli and Yan

Art Unit: 2457

with the teachings of Eames in order to change/update information that the client deems necessary.

### ***Response to Arguments***

45. Applicant's arguments with respect to claims 1-36 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

46. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this

Art Unit: 2457

final action.

47. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Chavez et al., US PUB # 2005/0068889, the method saves call state information to increase the natural network reliability by distributing the information. The method is highly scalable as clients store the call state information, and avoids the need for sending updated call information to a central database or to alternate call controllers. The method is simple to implement and requires relatively few resources. The method do not require the clients to be capable of recognizing the content of the call state information files, and hence changes can be made to the structure and content of the files without requiring changes to the client.

b. Lee et al., US Patent # 6,658,167 B1, Reduces quantity of data forwarded between server and client. Increases bandwidth between server and client. Ensures customizing changed data by calculating based on modification data.

48. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HO SHIU whose telephone number is (571)270-3810. The examiner can normally be reached on Mon-Thur (8:30am - 4:00pm).

Art Unit: 2457

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HTS  
12/03/2008

Ho Ting Shiu  
Patent Examiner  
GAU 2457

/ARIO ETIENNE/

Supervisory Patent Examiner, Art Unit 2457